

Council Resolution 02-05
Georgia Public Defender Standards Council

Whereas, O.C.G.A. § 17-12-8 (b) authorizes the Georgia Public Defender Standards Council, herein the “Standards Council” or “Council”, to adopt and implement the policies and procedures necessary to fulfill the purposes and provisions of the Georgia Indigent Defense Act of 2003, as amended; and

Whereas, O.C.G.A. § 17-12-20 authorizes the Standards Council to remove a circuit public defender for cause.

The Standards Council adopts the following Resolution:

Section 1. Definitions. For the purposes of this Resolution the following definitions apply:

- (1) “Removal for cause” means the following:
 - (a) removal of a circuit public defender for the substantial failure to meet or comply with standards, rules, policies and regulations adopted by the Council; or
 - (b) removal for willful disobedience of the directions of the Council; or
 - (c) removal for serious personal or professional misconduct including conviction of an offense designated as a felony under the laws of the State of Georgia or the United States or of a misdemeanor offense involving moral turpitude; or
 - (d) removal for being sanctioned by the State Bar of Georgia for a violation of the Rules of Professional Conduct; or
 - (e) removal for habitual neglect of duty or for incompetence in the performance of his or her duties; or
 - (f) removal for willfully engaging in activities that prevent the Standards Council from carrying out its responsibilities under the provisions of the Georgia Indigent Defense Act of 2003, as amended; or
 - (g) removal for one or more of the above reasons.
- (2) “Respondent” means a circuit public defender about whom a finding of probable cause for removal for cause has been made pursuant to Section 2.

Section 2. Initial procedure for removal of circuit public defender. If the Standards Council determines by an affirmative vote of a majority of a quorum present at a meeting of the Council that there is probable cause for the removal for cause of a circuit public defender, the Standards Council may remove a circuit public defender after complying with the provisions of this Resolution.

Section 3. Interim provision for the status of the circuit public defender. The respondent is entitled to leave with pay and benefits from the time the Standards Council determines by an affirmative vote of a majority of a quorum present at a meeting of the council that there is probable cause for the removal for cause of a circuit public defender until the final decision is made by the Council. During this period of time the Council shall assign a circuit public defender from another circuit to perform the duties of the circuit public defender for the respondent's circuit.

Section 4. Right to a notice; hearing. (a) Notice. The respondent has the right to notice and a hearing prior to the final vote by the Standards Council on the respondent's removal for cause. The director of the Standards Council shall prepare and serve on the respondent by personal service or by certified mail return receipt requested a notice which shall include in the following:

- (1) A statement that the Standards Council has determined by an affirmative vote of a majority of a quorum present at a meeting of the Council that there is probable cause for the removal for cause of the respondent.
- (2) A statement that the respondent has the right to a hearing on the issue pursuant to the procedures in this Resolution.
- (3) The time, place, and purpose of the hearing.
- (4) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (5) Reference to the particular sections of the statutes, resolutions, rules, policies, procedures and standards relied on as the basis for the determination of probable cause for the removal for cause.
- (6) A short and plain statement of the evidence that was the basis for the determination that there is probable cause for the removal for cause.
- (7) A list of witnesses who may be called at the hearing.
- (8) A copy of the documentary evidence that may be presented at the hearing.
- (9) A demand that the circuit public defender show cause why the circuit public defender not be removed for cause.

(b) Representation. In a hearing under this Resolution the respondent has the right to be represented by legal counsel, to cross examine witnesses and to respond and present evidence on all issues involved.

(c) Hearing. The circuit public defender may request a hearing within 30 days of the service on the circuit public defender of the notice provided in Section 4 (a). The Standards Council may conduct an evidentiary hearing or may appoint a special master to conduct an evidentiary hearing and to make findings of fact to be presented to the Standards Council. The Council may appoint an employee of the Council or a third party to serve as an advocate to present the case for the respondent's removal for cause. The Council may regulate the course of the hearing, set the time and place for continued hearings, fix the time for filing briefs and other documents, provide for the taking of testimony by deposition or interrogatory, and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Standards Council or the special master. The respondent, the advocate presenting the case for removal for cause, the special master, and members of the Standards Council may examine witnesses. The respondent and the advocate presenting the case for removal for cause may cross examination adverse witnesses.

(d) Rights of respondent at hearing. The circuit public defender has the following rights relating to the hearing:

- (1) The respondent shall be provided with copies of all documents, statements, and exhibits to be presented against the respondent no later than 30 days prior to any formal hearing.
- (2) The respondent may prepare and present a written response and provide any mitigating information to the council at least 10 days prior to the hearing.
- (3) The respondent is entitled to a formal hearing and the opportunity to present witnesses and other evidence in his support.
- (4) Affidavits are admissible if served on the opposing party at least 15 days in advance of the hearing.
- (5) Continuances may be granted in the discretion of the Standards Council or the special master.

(e) Rules of evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded in a hearing pursuant to this Resolution. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible under the rules of evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by a reasonably prudent person in the conduct of the person's affairs or if it consists of a report of medical,

psychiatric, or psychological evaluation of a type routinely submitted to and relied upon by a State agency in the normal course of its business. The rules of privilege recognized by law apply. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.¹ If the hearing is before a special master, the special master shall determine questions concerning the applicability of the rules of evidence. If the hearing is before the Standards Council, the chairperson shall determine questions concerning the applicability of the rules of evidence. The burden of proof applicable to termination of employees by State agencies applies to proceeding under this Resolution.

Section 5. Final Decision. If the circuit public defender does not request a hearing within 30 days of the service of the notice provided in Section 3 (c), a final decision of the Standards Council may be made on the record without a hearing and shall be made within 10 days after the expiration of the time to request a hearing. If the circuit public defender requests a hearing, the final decision shall be made on the record within 10 days of the hearing. In either case the final decision of the Standards Council requires an affirmative vote of 6 members of the Standards Council present at a meeting of the Council. The Council shall include in its decision the findings of fact on which the decision for removal for cause is based. The director shall communicate the Council's final decision to the respondent in writing within 10 days of the decision. The decision of the Standards Council is final and not subject to further administrative review.

Section 6. Record. The director shall keep a record in each proceeding pursuant to this Resolution. Hearings and deliberations of the Council pursuant to this Resolution are personnel matters and are not open to the public. The Standards Council shall maintain a full and complete record of each such action in the hearing process, including a record of hearing, complaint, and exhibits. All proceedings shall be taken down by a certified court reporter.

This 27th day of May, 2005.

Emmet J. Bondurant
Chairperson

Attested:

Natasha Perdue Silas
Secretary

¹ This provision is based on a similar provision in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-15.